OKLAHOMA TAX COMMISSION

TAX POLICY DIVISION
DAWN CASH, DIRECTOR

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June 11, 2009

Re: Sales Taxability of Lease Termination Fees; Our File No. LR-09-020

Dear

I am writing in response to your request regarding the sales taxability of lease termination fees. Based on your correspondence of February 13, 2009 and our recent telephone conversation the facts at issue are set forth below along with a response to your inquiry.

leases equipment to lessee users in the state of Oklahoma will purchase the equipment from without sales tax by providing a resale certificate and then charge tax on each lease payment from the lessees. The lease agreement, a noncancelable full payout lease, entered into between and the lessees, does not give the lessee the right to terminate the lease prior to the lease expiration. Notwithstanding this fact, some lessees request that the lease be terminated early. often complies with their request but requires them to pay a fee. The termination fee charged equates to the total remaining lease payments.[1]

The sale of tangible personal property, unless specifically exempted by the provisions of the Oklahoma Sales Tax Code, is subject to the levy of sales tax. 68 O.S. §1354(A)(1). A sale includes but is not limited to "the exchange, barter, lease, or rental of tangible personal property resulting in the transfer of the title to or possession of the property." 68 O.S. §1352(22)(a). Gross receipts, gross proceeds, or sales price is the base upon which sales tax is calculated. The terms are synonymous and are defined as "the total amount of consideration . . . for which personal property or services are sold, leased or rented . . . whether received in money or otherwise. . . ." 68 O.S. § 1352(12)(a).

[1]The time value of money is not considered in the calculation of the termination fee.

The described termination fee is part of the gross receipts received by for the rental of equipment. The Sales Tax Code provides for certain deductions from gross receipts however a lease termination fee is not one of them and is included in the amount subject to sales tax.

This response applies only to the circumstances discussed in your request of February 13, 2009. Pursuant to OAC 710:1-3-73(e), this Letter ruling may be generally relied upon only by the entity to whom it is issued, assuming that all pertinent facts have been accurately and completely stated, and there has been no change in applicable law.

Sincerely,

OKLAHOMA TAX COMMISSION

Christy J. Caesar

Christy J. Caesar
Tax Policy Analyst